



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE THE APPLICATION OF:

Inventor : Mitchell R. Swartz

PAPER:

Group Art Unit: 3641

Serial no. 09/750, 480

Examiner: R. Palabrica

Filed: 12/28/00

For: **METHOD AND APPARATUS  
TO MONITOR LOADING  
USING VIBRATION**

This is a continuation of Serial no. 07/371,937

Filed: 06/27/89

Commissioner for Patents

Alexandria, VA 22313-1450

October 18, 2004

**DECLARATION OF DR. MITCHELL SWARTZ**

I, Mitchell R. Swartz, declare that I am a citizen of the United States of America and the inventor of the invention described in the above-entitled application.

1. I have a background in electrical engineering, material science, electrochemistry, and medicine, and have worked in this field for more than a decade, and have worked on experimental projects at the Massachusetts Institute of Technology, Massachusetts General Hospital and elsewhere. I have published more than forty peer reviewed papers in cold fusion, including those which prove the present invention works as taught in the above-entitled original specification and claims.

2. I received the Office's Notice of noncompliance Amendment, mailed September 23, 2004. (cover as Exhibit "A", attached).

3. Said office communication ignores pages 91 and those following in my Communication where there was a proper identifier and changes were shown in the claims by underlining and strikethrough.

4. The Examiner's Notice states that "amended claims 8 and 10 ... raise new issues that would require further consideration and/or search and they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal." However, my arguments have been ignored even though this is before the Board of Patent Appeals. The Examiner did not cite Applicant's arguments, nor did the Examiner discuss Applicant's arguments, nor did the Examiner rebut Applicant's arguments. Therefore it is impossible to tell how the Examiner weighed Applicant's arguments.

5. In my belief and opinion, in any other field, medicine or engineering, repeated disingenuity and inaccuracy and delay and failure to abide by a uniform code of regulations, would have led to removal of those in the Office who continue disingenuity, inaccuracy, delay, and their use of more than one standard of review.



Mitchell R. Swartz, ScD, MD

I declare that all statements herein of my own knowledge are true and that all statements made on information and belief are believed to be true.

Signature of Inventor:

October 18, 2004



Mitchell R. Swartz, ScD, MD  
Post Office Box 81135  
Wellesley Hills, Mass. 02481



# UNITED STATES PATENT AND TRADEMARK OFFICE

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/750,480

12/28/2000

Mitchell R. Swartz

7970

7590

09/23/2004

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EXAMINER

PALABRICA, RICARDO J

ART UNIT

PAPER NUMBER

3641

DATE MAILED: 09/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

EXHIBIT "A"